IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.104 OF 2007
IN
SUIT NO.2933 OF 2004

Central Bank of India ...Plaintiff
Vs.
Ganesh Balkrishnan Hatle & Ors. ...Defendants
And
Umaiya Shaikh ...Applicant

Mr.G.N.Salunke for Applicant
Mr.O.A.Das for Plaintiff
Mr.P.J.Ramchandani for Defendant Nos.1 and 3
Mr.K.I.Patel Representative of Court Receiver present

CORAM: SMT. ROSHAN DALVI, J.
DATED: 25TH JANUARY, 2007

P.C.

1. The Applicant claims to be the owner and in possession of the flat for which the Court Receiver has been appointed under the order dated 22nd August, 2006 in this Suit. The Court Receiver went to take possession. The flat was found locked. It was reported to the Court Receiver that the applicant was residing in the flat, but she had locked her flat and gone somewhere. Hence, an order for taking forcible possession and sealing suit premises has been passed.

2. This application is for being joining her as a party Defendant No.4 and for recalling the order of taking forcible possession.

3. The Applicant must therefore show her clear title as well as her possession. The Applicant has produced a registered agreement for sale dated 2nd June, 2004 entered into by her with the developers and signed by the Proprietress of the Developers. Under that agreement executed in 2004 a total consideration of Rs.3,58,000/- is paid in cash.

4. The Plaintiff lent and advanced loan to the Defendants upon the mortgage of the suit flat under another registered agreement dated 24th September, 2002. That agreement has been entered into by the Defendant with the Proprietress of the Developers. Under that agreement Rs.6,08,000/- has been paid by the Cheque issued by the Plaintiff Bank for financing the transaction.

5. It is seen that the consideration is much higher in the year 2002 then in 2004. After the agreement is registered, the applicant as much as the public are deemed to have notice of the fact of the transaction under the registered agreement. The applicant is required to have satisfied

herself about the clear title to the flat and then purchase the flat, which she did for less than the market value at the relevant time. The applicant's bonafides are therefore not clear. Nevertheless the applicant is in possession. She requires the Court to protect her possession. The Court must balance equities. The Plaintiff has an equitable mortgage. The suit flat has been sold under the registered agreement and thereafter mortgaged. Had the applicant taken search in the Revenue Records, she would not have entered into the transaction which she did. Perhaps knowing of the unclear title the applicant has purchased and has been sold the flat at an undervaluation. The applicant therefore, cannot claim equity. The applicant may continue in possession but only as a Court Receiver's agent. She shall pay royalty to the Court Receiver as fixed by the Court Receiver on the terms specified in the Agency Agreement with the Court Receiver as she is in possession without title. If the applicant fails to pay royalty as fixed by the Court Receiver, the Court Receiver shall take forcible possession as already directed.

6. The applicant is a proper party to the suit as she claims to be victimized by the proprietress of the Developers as much as the Defendants. The applicant shall therefore, be made a party to the Suit.

7. The Plaint shall be amended to that extent. The Plaintiffs may make any incidental amendments also. The Plaintiffs shall amend the Plaint within 3 weeks. The Plaintiff shall also amend the copy of the Plaint served upon the Defendants within 3 weeks.

8. The Plaintiffs shall serve the amended copy of the Plaint upon the Applicant's Advocate. The Applicant's Advocate waives service.

9. The Chamber Summons disposed of accordingly.

(SMT.ROSHAN DALVI, J.)